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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

KULDEEP SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-72059

Agency No. A75-248-082

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 26, 2008<sup>\*\*</sup>

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Kuldeep Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his motion to reopen removal proceedings based on

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

ineffective assistance of counsel. To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the agency's denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The IJ properly denied Singh's motion to reopen where Singh did not demonstrate that he exercised diligence in discovering his prior counsel's errors. *See id.* at 897 (equitable tolling is available to a petitioner who establishes deception, fraud, or error, and exercised due diligence in discovering such circumstances).

We lack jurisdiction to review Singh's contention that his due process rights were violated because he failed to raise his contention before the BIA and accordingly, did not exhaust his administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that this court lacks jurisdiction to review procedural due process claims not raised before the agency).

**PETITION FOR REVIEW DENIED in part and DISMISSED in part.**